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AGASTA CO LTD & ANOR
v. AUTOPULENCE SDN BHD & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
AZIZUL AZMI ADNAN JCA
B AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NOS: B-03(IM)-3-01-2024 & B-03(IM)-4-01-2024]
20 MARCH 2025

C **Abstract** – *With respect to licence pertaining to importation of reconditioned motor vehicles as issued by the Ministry of Investment, Trade and Industry ('MITI'), it is governed by a policy called 'Dasar Baharu AP Terbuka' as passed by the MITI. A contractual arrangement, which was entered in contravention with any of the terms of the said licence or policy, could not only be rendered as void ab initio* D *pursuant to s. 24(e) of the Contracts Act 1950, but considering that the said policy was passed by the MITI in accordance with order 3 of the Customs (Prohibition of Imports) Order 2017, the contractual agreement could also be illegal for breaching order 3(1) of the said Order.*

E ***CONTRACT:*** *Illegality – Agreement – Contractual agreement entered contrary to licence and policy issued by Ministry of Investment, Trade and Industry ('MITI') – Holder of licence allowed other businesses to use licence to import reconditioned motorcars from Japan in return for payment ('contractual arrangement') – Whether* F *actions of licence holder allowed by terms of licence and policy of MITI – Whether contractual arrangement in contravention with public policy – Whether rendered void ab initio by s. 24(e) of Contracts Act 1950 – Whether in breach of order 3(1) of Customs (Prohibition of Imports) Order 2017*

G The appellants were the judgment creditors of Rintis Malay Motors Sdn Bhd ('Rintis'). The first appellant was a Japanese distributor of reconditioned motorcars, who had sold the same to Rintis. The second appellant was an entity owned by the Government of Japan, which provided export insurance to Japanese companies. The first appellant had subrogated its right to claim for any payment from Rintis to the second appellant. Dispute between the said parties began after Rintis failed to pay for 29 luxury Toyota multi- H purpose vehicles ('MPVs') it had purchased from the first appellant, causing the appellants to sue Rintis for an amount more than RM9 million. The appellants had successfully obtained a judgment against Rintis for the said sum. However, the judgment sum remained unsatisfied. As a result, the appellants commenced garnishee proceedings against Rintis, but only an I amount of approximately RM218,000 was managed to be yielded by the appellants. The appellants later obtained a writ of seizure and sale against

Rintis, and through the help of the court bailiffs, proceeded to seize the MPVs, which at the time of the seizure, were being displayed for sale in the premises of Rintis. Subsequently, the respondents, *ie*, 'Autopulence' and 'JH Capital', gave notices to the sheriff of their claim over the MPVs. As stated, Autopulence had claimed seven of the MPVs, whereas the remaining 22 MPVs were claimed by JH Capital. With respect to Autopulence's claim, the same argued that it had entered into a contractual arrangement with Rintis (also entered by Rintis with JH Capital) ('contractual arrangement'). According to the contractual arrangement, Autopulence had been allowed by Rintis to use its approved permits to import motor vehicles form Japan, in return which Autopulence would pay Rintis RM6,000 per approved permit utilised. Further, such amount would not be paid to Rintis, but to an associate company named 'Reksinar'. On the part of Rintis, the same had agreed to acknowledge that all rights, title and interest in the imported motor vehicles would be vested with Autopulence. Pursuant to the payment of customs duties, Rintis would be obligated to deliver the imported motor vehicles to Autopulence within seven days' notice. Meanwhile, regarding JH Capital's claim, the same contended that it had paid the suppliers in Japan for the 22 MPVs and had utilised the approved permits belonging to Rintis to import the same into Malaysia. As such, JH Capital claimed that it was a *bona fide* purchaser and was possessed of all rights, title and interest over the 22 MPVs. The application for an interpleader notice by the sheriff, after being heard by the Deputy Registrar of High Court, was summarily dismissed. Aggrieved, the respondents appealed to the judge in chambers. The Judicial Commissioner ('JC') allowed the appeals and held that the respondents were *bona fide* purchasers and the legitimate owners of the MPVs who possessed of all rights, title and interest over the same. Aggrieved, the appellants then filed the present appeals before this court. The issues that arose were: (i) whether the contractual arrangement was in clear contravention of applicable policy issued by the Ministry of Investment, Trade and Industry ('MITI'), *ie*, the 'Dasar Baharu AP Terbuka' ('policy'); (ii) whether JH Capital had not discharged its burden of proving its ownership over the 22 MPVs; (iii) whether the 22 MPVs were purchased by JH Capital for the purpose of resale, thus contravening the policy issued by the MITI; and (iv) whether the contractual agreements were intended to circumvent the requirements imposed by the policy, hence the same was void *ab initio* as being contrary to public policy pursuant to s. 24(e) of the Contracts Act 1950.

Held (allowing appeals)
Per Azizul Azmi Adnan JCA delivering the judgment of the court:

(1) In the case of importation of motor vehicles, the MITI had been designated as the permit issuing agency. The importation of reconditioned vehicles required a licence referred to as an open

approved permit ('open AP'), which was governed by the policy. By the terms of the policy, the holder of an open AP must itself undertake business of importing and selling of the motorcars and may not appoint any intermediary to undertake this business. As such, the contractual agreement entered into by Rintis and Autopulence was in clear contravention of the policy because it had the effect of substantively transferring the business of importing and selling the motorcars to Autopulence, in return for a fixed fee received in respect of each motorcar purchased and imported. The actions by Rintis, in fact, could render it liable to, among others, having its open AP revoked. (paras 29-32)

(2) There was no positive assertion by JH Capital that it had purchased the 22 MPVs as the end-user, end-purchaser or had not purchased them for resale. Instead, there was a positive assertion to the contrary by the director of the first appellant who had stated that each of the seized MPVs were displayed in the premises of Rintis, with a slip of paper which, among others, displayed the chassis number, year of manufacture and base price of the MPVs. What could be inferred from that was that the MPVs were being offered for sale in the premises of Rintis. The positive assertion to the contrary was not admitted to by JH Capital, but the denial by the same was a mere blanket, wholesale denial, without condescension into particulars. JH Capital, as the claimant of title over the 22 MPVs, bore the burden of proof. It was incumbent upon JH Capital to put forth positive assertions (for instance, that it had purchased the MPVs for its own use). However, this was not done. If JH Capital was not the end-user or the end-purchaser, but had instead purchased the 22 MPVs for resale, then its contractual arrangement with Rintis would be a contravention against the policy. (paras 35, 36, 38 & 39)

(3) Other than the finding that the non-compliance with the policy could amount to a contravention of order 3(1) of the Customs (Prohibition of Imports) Order 2017, the object of the contractual arrangement was clearly intended to circumvent the requirements imposed under the policy. The avowed objectives of the policy were set out in para. 1.1, and included the aim of fortifying the economic agenda of Bumiputeras. The scheme put in place by Rintis and the respondents exemplified what was colloquially referred to as an Ali Baba arrangement, with Reksinar, a Bumiputera company, acting merely as a front and reduced to a rent-seeking role. It was difficult to see how this arrangement did not abuse and undermine the affirmative action policies of the Government. For this reason, the contractual arrangement entered by each of the respondents with Rintis were void *ab initio* for being contrary with the public policy pursuant to s. 24(e) of the CA. (paras 50-52)

Case(s) referred to:
Eng Mee Yong & Ors v. V Letchumanan [1979] CLJU 18; [1979] 1 LNS 18 ***(refd)***
Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***
Sigma Air Conditioning Sdn Bhd v. World Wide Agencies (M) Sdn Bhd [1979] CLJU 94; [1979] 1 LNS 94 HC ***(refd)***
Tan Keen Keong v. Tan Eng Hong Paper & Stationery Sdn Bhd & Ors And Other Appeals [2021] 2 CLJ 318 FC ***(refd)***
Tay Bok Choon v. Tahansan Sdn Bhd [1987] 1 CLJ 441; [1987] CLJ (Rep) 24 PC ***(refd)***
Thong Foo Ching & Ors v. Shigenori Ono [1998] 4 CLJ 674 CA ***(refd)***

Legislation referred to:
Contracts Act 1950, s. 24(b), (e), 66
Customs (Prohibition of Imports) Order 2017, O. 3(1)
Rules of Court 2012, O. 17 rr. 2, 3(1), 5(2), 11, O. 35, O. 56 r. 1(3A)

For the appellants - Cyndi Chow Li Kian, Kevin Chin Kwan Vui, Ho Yong Yi & Chin Hau Zhe; M/s Josephine, LK Chow & Co
For the respondents - Tan Shao Jia & Wong Jun Wei; M/s Manjit Singh Sachdev Mohammad Radzi & Partners

[Editor's note: Appeal from High Court, Kuala Lumpur; Execution No: BA-37WS-4-03-2023 (overruled).]

Reported by Syamim Ariffin

JUDGMENT

Azizul Azmi Adnan JCA:

Introduction

[1] The appellants are judgment creditors of Rintis Malay Motors Sdn Bhd ('Rintis'). They obtained writs of seizure and sale against Rintis. With these writs they seized 29 luxury Toyota multi-purpose vehicles in the possession of Rintis. The respondents in both appeals before us, Autopulence Sdn Bhd ('Autopulence') and JH Capital Sdn Bhd ('JH Capital') gave notices to the sheriff pursuant to O. 17 r. 2 of the Rules of Court 2012 of their claims over the seized vehicles. They claimed that the vehicles belonged to them, with Autopulence claiming seven motor vehicles and JH Capital the remaining 22 units. The premise of these claims was that the respondents had purportedly paid for the vehicles.

[2] Following an application for a interpleader notice by the sheriff, the deputy registrar of the High Court at Shah Alam dismissed the respondents' claim over the vehicles.

[3] The respondents appealed to the judge in chambers. Their appeals were allowed by the Judicial Commissioner hearing the matter. The appellants then appealed to this court.

A **Material Background Facts**

The Judgment Debt

[4] The first appellant, Agasta Co Ltd, is a distributor of reconditioned motorcars in Japan. It sold reconditioned motorcars to the judgment debtor, B Rintis, but not all the motorcars were paid for. The first appellant's rights to claim for payment had been subrogated to the second appellant, Nippon Export and Investment Insurance, an entity owned by the Government of Japan which provides export insurance to Japanese companies.

[5] In 2019, the appellants sued Rintis for the equivalent in Japanese yen C of more than RM9 million. They obtained judgment in August 2021, but the judgment remained unsatisfied.

Execution Proceedings

[6] The appellants then proceeded with execution proceedings against D Rintis.

[7] Garnishee proceedings commenced against Rintis only yielded approximately RM218,000 from accounts held at three local banks.

[8] In March 2023 the appellants obtained a writ of seizure and sale, E pursuant to which they proceeded to seize, with the assistance of court bailiffs, the 29 MPVs that are the subject of the current dispute. The value of these vehicles was estimated by the court bailiff to be RM6,054,290.

[9] It was averred on behalf of the appellants that, at the time of their seizure, the vehicles were displayed for sale in the premises of Rintis[1]. In F response to this averment, the representative of JH Capital made a blanket denial, but without making any positive assertion to the contrary[2]. One of the photographs exhibited recorded the vehicle bearing the chassis number 38349[3], which corresponded with the chassis number of one of the vehicles claimed by JH Capital[4].

G *The Claim By The Respondents*

[10] On 7 April 2023, the respondents gave notices to the sheriff of their claims over the vehicles.

[11] Autopulence claimed ownership to seven of the subject MPVs. It H explained its claim in the following manner: it had been allowed by Rintis to use its Approved Permits to import motor vehicles from Japan, in return for which Autopulence would pay to Rintis the sum of RM6,000 for each such approved permit utilised. This RM6,000 would not be paid to Rintis, but would instead be paid to a company known as Reksinar Sdn Bhd, said to be an associate company of Rintis. For its part, Rintis had acknowledged I that all rights, title and interest in the vehicles imported using its approved permits would lie with Autopulence, and that, after payment of customs duties, Rintis would be obligated to deliver the vehicles to the Autopulence within seven days' notice.

[12] This contractual arrangement between Rintis and Autopulence was recorded in a letter from Rintis to Autopulence dated 9 March 2022[5]. This letter was signed by Dato' Zulfakar Mohamed Bledram, a director of Rintis. Learned counsel for the appellants objected to the admission of this letter into evidence, arguing that it had been exhibited in an affidavit affirmed by Dato' Zulfakar after the deputy registrar had delivered her decision and which affidavit had been filed without leave of court.

[13] JH Capital claimed ownership to 22 of the subject MPVs. In the affidavit affirmed in support of the claim by JH Capital, its director explained that it had paid the suppliers in Japan for the subject vehicles and had utilised the approved permits belonging to Rintis to import the vehicles into Malaysia. As such, JH Capital asserted that it was a *bona fide* purchaser and was possessed of all rights, title and interest over the 22 subject vehicles.

[14] In response to the averment by the appellants that Rintis would not be permitted to appoint any intermediary company to undertake its business[6], JH Capital responded as follows:

> 7. In reply to paragraph 6, 7, 8 and 9 of the Creditor's Affidavit in Reply, I categorically deny the same and put the Execution Creditors/Plaintiffs to strict proof thereof and humbly state that it is undisputed and further corroborated in Maybank's Confirmation Letter that the Claimant who had remitted and made full payment for the Claimant's Vehicles to the supplier in Japan is the *bona fide* purchaser and legitimate owner and has all the proprietary rights, titles and interest to the Claimant's Vehicles seized.[7]

[15] Crucially, JH Capital's affidavit in reply did not contain any positive averment that it was the end-purchaser or end-user of the 22 MPVs and not a mere intermediary. As we shall see, the response by JH Capital is critical in the context of its case, because of the incidence of the burden of proof in interpleader proceedings.

[16] In addition, JH Capital-unlike Autopulence-did exhibit any correspondence from Rintis acknowledging that title to the MPVs had always belonged to JH Capital from the moment the vehicles were purchased from the sellers in Japan, and that title would not pass to JH Capital only upon delivery of the vehicles (which would be the point in time where title and risk to goods would customarily pass).

[17] Both Autopulence and JH Capital adduced documentary evidence that supported their contentions that they had made payment for the subject vehicles directly to the dealerships in Japan which had supplied the vehicles. There were concurrent findings of facts by both the deputy registrar and the Judicial Commissioner that the respondents had in fact made such payments, and we see no reason why these findings ought to be disturbed.

[18] However, the customs-related documentation relating to all the subject vehicles recorded Rintis as the owner of the vehicles.

Decisions At The High Court

[19] As explained, the deputy registrar of the High Court at Shah Alam summarily dismissed the respondents' claim over the vehicles. On appeal to the judge in chambers, this decision was overturned.

[20] The Judicial Commissioner of the High Court found that the respondents were *bona fide* purchasers and the legitimate owners of the subject vehicles, possessed of all rights, title and interest over them. The bases of this finding were:

(i) in as far as Autopulence was concerned:

(a) the contractual relationship between it and Rintis was established through the Rintis letter dated 9 March 2022, which provided that title to the vehicles purchased would belong to Autopulence, and that Rintis was only entitled to a fixed rate of RM6,000 for each approved permit utilised; and

(b) the court found as a matter of fact that Autopulence had paid the purchase price for the vehicles that were the subject of its claim, both through the documentary evidence in the form of invoices and through the corroborative testimonies from the Japanese supplier of the vehicles;

(ii) as regards JH Capital:

(a) the invoices issued by the Japanese suppliers recorded JH Capital as the purchaser of the subject vehicles, and their chassis numbers as recorded in the invoices corresponded with those of the vehicles claimed; and

(b) the court found as a matter of fact that JH Capital had paid for the subject vehicles through the documentary evidence adduced;

(iii) the payments for, and importation of, the vehicles occurred prior to the execution proceedings, which meant that that the rights, title and interests of the respondents over the vehicles also became established before the execution proceedings; and

(iv) the Judicial Commissioner also found that no issue of illegality arose because the respondents had fully paid for the vehicles and were their rightful owners.

The Applicable Principles

Interpleader Actions Generally

[21] Interpleader proceedings are commenced either by originating summons or, where there is a pending action, by a notice of application in the prescribed form: O. 17 r. 3(1) of the Rules of Court 2012. Where:

(i) the applicant is the sheriff (as in this case);

(ii) where the claimants agree; or

(iii) where the facts are not in dispute and the issue in dispute turns upon a question of law.

the court may determine the issue summarily: O. 17 r. 5(2). In our view, the expression "the facts are not in dispute" must necessarily mean that there are no material facts in dispute that would otherwise impede the court's ability to make a determination on the merits based purely on affidavit evidence. If there is any material dispute as to facts, then a trial should be ordered, in which event O. 35 shall apply with the necessary modifications: O. 17 r. 11.

[22] The ordinary principles of a hearing on affidavits would apply if the summary procedure under O. 17 r. 5(2) is invoked. If an assertion of fact in an affidavit is credibly disputed, the court must proceed to hear the case without taking into account the disputed facts: *Tay Bok Choon v. Tahansan*[8]. But an assertion should not merely be taken at face value. A court would still be entitled to reject an assertion of fact if it is inconsistent with the deponent's own averments (which is to say that it is self-contradictory), if it is vague or equivocal, if it is inconsistent with undisputed contemporaneous documentary evidence or if it is inherently implausible in and of itself: see the decision of the Judicial Committee of the Privy Council on appeal from Malaysia in *Eng Mee Yong & Ors v. V Letchumanan*[9]. Where, however, a credible assertion of fact goes unchallenged, then the court must accept that assertion as being representative of the truth: *Ng Hee Thoong & Anor v. Public Bank Bhd*[10].

[23] In the present case, the interpleader application was determined by the deputy registrar through the summary process. In our view this was an entirely appropriate case to be determined on affidavit evidence, because the key facts of the case were not in material dispute, and because the issue in the case turned primarily on a question of law.

The Burden Of Proof

[24] The law places on a claimant in interpleader proceedings the burden to prove that he is the lawful owner of the goods in dispute: *Sigma Air Conditioning v. World Wide Agencies*[11]. The burden of proof thus lay with the respondents in the present case to show that all rights, title and interest in the subject vehicles had passed to them at the point that the vehicles were purchased from the suppliers in Japan.

A **Analysis And Decision**

[25] Our findings in these appeals may be summarised as follows:

(i) the contractual arrangement entered into by Rintis with Autopulence as recorded in the Rintis letter of 9 March 2022 had the effect of substantively transferring the business of importing and selling the motorcars to Autopulence and was thus in clear contravention of the applicable policy issued by the Ministry of Investment, Trade and Industry ("MITI");

(ii) JH Capital had not discharged the burden of proving that title to the 22 MPVs belonged to it, as the mere fact that it had made payment for the vehicles does not of itself prove ownership over the vehicles;

(iii) as a separate and independent finding, the evidence in this case showed that the 22 MPVs had been purchased by JH Capital for re-sale, which contravened the applicable MITI policy; and

(iv) the object of the contractual arrangement that had been entered into by each respondent with Rintis was clearly intended to circumvent the requirements imposed under the applicable MITI policy, and hence the contracts are *void ab initio* as being contrary to public policy under s. 24(e) of the Contracts Act 1950. Accordingly, title to the 29 motor vehicles never passed to the respondents.

[26] We explain in further detail the bases of our findings in the following paragraphs.

The Objection To The Affidavit By Dato' Zulfakar

[27] Learned counsel for the appellants raised the preliminary point that the Judicial Commissioner ought not have had regard to the Rintis letter of 9 March 2022 (which documented the contractual arrangement between Autopulence and Rintis). The basis of this objection was that the affidavit in which this letter was exhibited had been affirmed by the representative of Rintis, Dato' Zulfakar Bledram, on 12 December 2023, which was after the deputy registrar had given her decision at first instance. Any fresh evidence to be adduced in an appeal to a judge in chambers must of course comply with the requirements of O. 56 r. 1(3A) of the Rules of Court 2012. According to learned counsel for the appellants, the learned Judicial Commissioner was thus in error when she referred to the Rintis letter of 9 March 2022.

[28] This submission overlooks the fact that the Rintis letter had already been exhibited in Autopulence's first affidavit dated 22 May 2023 and was thus properly in evidence both before the deputy registrar and the Judicial Commissioner.

Importation Of Reconditioned Vehicles Into Malaysia

[29] Under the Customs Act 1967, goods may only be imported into Malaysia with the permission of the Royal Malaysian Customs. In the case of motor vehicles, MITI has been designated as the permit issuing agency.

[30] The importation of reconditioned vehicles requires a licence referred to as an Open Approved Permit ("Open AP"). The terms upon which open APs are issued are governed by a document known as Dasar Baharu AP Terbuka issued by MITI. The terms of this MITI policy includes the following provision:

> (vi) Perniagaan (pengimportan/penjualan) hendaklah dijalankan oleh syarikat AP Terbuka sendiri tanpa menggunakan syarikat pengantara:
>
> a. Pelantikan wakil pengedar adalah tidak dibenarkan;
>
> b. Penjualan kenderaan kepada syarikat-syarikat yang menjalankan perniagaan kenderaan baharu/terpakai bagi tujuan penjualan semula adalah tidak dibenarkan; dan
>
> c. Pameran/penyimpanan kenderaan di premis syarikat-syarikat lain yang menjalankan perniagaan kenderaan baharu/terpakai adalah tidak dibenarkan.

[31] By the these terms, the holder of an Open AP must itself undertake business of importing and selling of the motorcars, and may not appoint any intermediary to undertake this business.

The Arrangement With Autopulence

[32] In our view, the contractual arrangement entered into by Rintis with Autopulence as recorded in the Rintis letter of 9 March 2022 was in clear contravention of the MITI policy, because it had the effect of substantively transferring the business of importing and selling the motorcars to Autopulence, in return for a fixed fee received in respect of each motorcar purchased and imported. It is thus clear that the actions by Rintis would have rendered it liable to, among others, having its Open AP being revoked.

The Arrangement With JH Capital

[33] The position of JH Capital was a little more nuanced. It did not adduce any written agreement with Rintis, but merely stated that the motor vehicles belonged to it because it had made the payment of the purchase price for the vehicles. To our minds, just because JH Capital had paid for the vehicles does not lead to the inevitable conclusion that it was the owner of the vehicles. A financier, for example, may be directed by its borrower to make direct payment to the seller of goods, but that does not mean that the

financer becomes the legal and beneficial owner of the goods; title would still pass to the borrower upon delivery. If JH Capital were a mere financier, then clearly there would not be any contravention of the Dasar Baharu AP Terbuka by Rintis. In that event, the position of JH Capital would be the same as that of a bank, had Rintis obtained a bank loan to finance the purchase of motor vehicles. However, as explained, in the ordinary course, a mere financier does not assert ownership or title over the vehicles.

[34] The other possibility was that JH Capital was the end-user or end-purchaser of the 22 vehicles over which it asserted ownership. It is entirely possible for customer to approach Rintis, requesting that a purchase be made of a specified motor vehicle, on the agreement and understanding that the customer would entirely fund the transaction. In order to protect the customer's investment, the customer may agree with Rintis that title to the vehicle passes to the customer upon completion of the purchase from the supplier in Japan. (It may well be inadvisable for the customer to do so, because risk in the goods would also pass to the customer at that time, exposing the customer to the vicissitudes of transhipment from Japan.) But, assuming for the moment that this was indeed the commercial arrangement, we can see no contravention of the Dasar Baharu AP Terbuka, because this arrangement does not have the effect of Rintis transferring its business to the customer.

[35] On the facts of the present case, however, there was no positive assertion by JH Capital that it had purchased the 22 MPVs as the end-user or end-purchaser, and had not purchased them for resale. Indeed, there was a positive assertion to the contrary by Mr Ryohei Okochi, a director of the first plaintiff Agasta Co Ltd, who stated that each of the seized vehicles were displayed in the premises of Rintis with a slip of paper indicating (among others) chassis number, year (presumably year of manufacture) and base price. From this it may be inferred that the vehicles were being offered for sale on the premises of Rintis. Five photographs were exhibited, and one of the photographs showed a slip of paper that bore the chassis number (38349) that corresponded to a vehicle claimed by JH Capital.

[36] The averment by Mr Okochi was not admitted by JH Capital. But its denial was a mere blanket, wholesale denial, without condescension into particulars. The relevant paragraph in the affidavit affirmed by Dato' Sri Wang Yen Liang stated:

> 12. In reply to paragraph 14, 15 and 16 of the Creditors' Affidavit in Reply, I categorically deny the same and put the Execution Creditors/Plaintiffs to strict proof thereof and reiterate paragraph 6, 7, 10 and 11 herein. I further state that it is undisputed and further corroborated in Maybank's Confirmation Letter that the Claimant who had remitted and made full payment for the Claimant's Vehicles to the supplier in Japan is the *bona fide* purchaser and legitimate owner and has all the proprietary rights, titles and interest to the Claimant's Vehicles seized.

[37] As explained at para. [22] *ante*, in a hearing on affidavits, if an averment is credibly denied, then the court must proceed to hear the case without taking into account the disputed assertion of fact. Here, however, it could hardly be said that there was a credible denial of the assertion of fact.

[38] It needs further emphasis that it is JH Capital, as the claimant of title over the 22 MPVs, which bears the burden of proof. It is not for a claimant to fold its proverbial arms to put the judgment creditor to strict proof of its assertions. It was incumbent upon JH Capital to put forth positive assertions (for instance, to the effect that it had purchased the MPVs for its own use), which it has not done in the present case.

[39] If JH Capital was not the end-purchaser or end-user of the 22 MPVs, but had instead purchased them for re-sale, then the contractual arrangement that it had with Rintis to use the Open APs held by Rintis would have constituted a contravention of the Dasar Baharu AP Terbuka.

[40] We are thus of the view that, in the case of JH Capital:

(i) it has not proven that title to the 22 MPVs belonged to it, as the mere fact that it had made payment for the vehicles does not of itself prove ownership over the vehicles; and

(ii) in any event and as a separate and independent finding, even if title to the 22 MPVs belonged to JH Capital, the evidence showed that the vehicles had been purchased for re-sale, which contravened the Dasar Baharu AP Terbuka.

[41] The effect of contravention of the MITI policy is considered in the following paragraphs.

Illegality

[42] The critical – and in our view determinative – question in this case was whether contravention by Rintis of the terms of the MITI policy would result in an illegality and would render void the contractual arrangements entered into by each respondent with Rintis.

[43] The analysis on any challenge on the legality of a contract must begin with s. 24 of the Contracts Act 1950, which provides as follows:

> What considerations and objects are lawful, and what not
>
> The consideration or object of an agreement is lawful, unless:
>
> (a) it is forbidden by a law;
>
> (b) it is of such a nature that, if permitted, it would defeat any law;
>
> (c) it is fraudulent;
>
> (d) it involves or implies injury to the person or property of another; or
>
> (e) the court regards it as immoral, or opposed to public policy.

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> In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

[44] It is settled law that not every contravention of a statutory prohibition will render a contract void; whether it does so depends on the
B proper construction of the relevant statute: see for example the Federal Court decisions in *Detik Ria v. Prudential Corporation*[12] and *Tan Keen Keong v. Tan Eng Hong Paper & Stationery*[13]. To hold otherwise, according to Mary Lim FCJ in the latter case, would result in chaos in business and commerce.

[45] However, there need not always be a contravention of a statute in
C order for s. 24(b) to be engaged. Depending on the circumstances of the case, the contravention of guidelines or policy may also render a contract void under s. 24(b).

[46] In the Court of Appeal case of *Thong Foo Ching & Ors v. Shigenori*
D *Ono*[14], the parties entered into two sale and purchase agreements that were structured in a manner as to circumvent the applicable guidelines issued by the Foreign Investment Committee ('FIC'), which required that transactions in excess of RM5 million be subject to the requirement for FIC approval. The sale and purchase were divided into two, one for the sale of lands, for which the purchase price was RM4.9 million, just under the threshold for
E FIC approval. The other was an agreement for the sale of a company, for which the consideration was RM1.6 million. The agreement for the purchase of lands did not proceed to completion, and the purchaser sought to rescind the sale and purchase of shares, on the basis that there was a tacit oral agreement that the two agreements were inter-conditional. It was not
F disputed by the parties that the structuring of the agreements in the manner that they did had deprived the Government of revenue in the form of real property gains tax and stamp duty.

[47] Siti Norma JCA held that, although the guidelines issued by the FIC were not law, the agreements were nonetheless void *ab initio* pursuant to
G s. 24(b) of the Contracts Act 1950 as the agreements were of such a nature as would defeat the Real Property Gains Tax Act 1976 and the Stamp Act 1949, while Ahmad Fairuz JCA also found the agreements to be void, but on the grounds that they were opposed to public policy pursuant to s. 24(e) of the Contracts Act 1950.

H

[48] The policy entitled Dasar Baharu AP Terbuka were issued by MITI in accordance with the Customs (Prohibition of Imports) Order 2017[15], O. 3 of which provided as follows:

> Order 3. Conditional prohibition except under import licence
>
> I (1) The importation into Malaysia of goods specified in columns (2) and (3) of Part I of the Second Schedule, originating from the countries specified in column (4) of Part I of the Second Schedule is prohibited, except under an import licence:

(a) issued by the Director General; or

(b) issued by the proper officer of customs appointed by the Director General to act on his behalf at the ministry, department or statutory body as specified in column (5) of Part I of the Second Schedule,

and subject to such conditions specified in the import licence.

[49] Item 3 of the Second Schedule to the order specifies MITI as the issuing authority for import licences in respect of passenger motor vehicles.

[50] It can thus be seen that O. 3(1) of the Customs (Prohibition of Imports) Order 2017 provided that goods such as motor vehicles can only be imported into Malaysia under an import licence, and in a manner that complies with the conditions of that licence. The conditions are of course the terms contained in the Dasar Baharu AP Terbuka. The point may therefore be made that the non-compliance with the Dasar Baharu AP Terbuka amounted to a contravention of O. 3(1) of the Customs (Prohibition of Imports) Order 2017.

[51] In our view, the object of the contractual arrangement that had been entered into by each respondent with Rintis was clearly intended to circumvent the requirements imposed under the Dasar Baharu AP Terbuka. The avowed objectives of the MITI policy was set out in para. 1.1, and included the aim of fortifying the economic agenda of Bumiputeras. The scheme put in place by Rintis and the respondents exemplifies what is colloquially referred to as an *Ali Baba* arrangement, with the Bumiputera company acting merely as a front, and reduced to a rent-seeking role. It is difficult to see how this arrangement does not abuse and undermine the affirmative action policies of the Government.

[52] We are thus of the view that the contracts entered into by each of the respondents with Rintis are void *ab initio* as being contrary to public policy under s. 24(e) of the Contracts Act 1950. For this reason, title to the subject MPVs never passed to the respondents, notwithstanding that they may have paid for them.

[53] The learned Judicial Commissioner of the High Court, when addressing the point of illegality, had this to say:

(i) the arrangements and/or dealings between the claimants and the Execution Debtor with regards to the purchase and importation of imported vehicles is legitimate and a normal practice in the automotive industry;

(ii) during all material time, the Execution Debtor being the holder of Approved Permits (AP) is fully entitled to import imported vehicles from Japan under its Approved Permits (AP) license, in line with the guideline and/or policy laid down by the Ministry of International Trade and Industry (MITI);

A (iii) there is no element of illegality by virtue of the important (*sic*) of the seized vehicle by the execution debtor and subsequently kept in the execution debtor's bonded warehouse for and on behalf of the claimants. The claimants had remitted full payment for the purchase of the seized vehicles and hence the claimants are the *bona fide* purchases of the seized
B vehicles.

[54] This passage suggests that the Judicial Commissioner came to the conclusion that there was no illegality because the respondents had remitted full payment and hence were *bona fide* purchasers of the vehicles, and that the arrangements with Rintis were "legitimate and a normal practice in the
C automotive industry".

[55] The reasoning has been, respectfully, put upon its head. It was the illegality that defeated the title of the respondents, and hence the first enquiry must be to ascertain whether the breach of law or policy has rendered void and unenforceable the contractual arrangements entered into between Rintis
D and the respondents.

[56] It has to be further emphasised that it is the bounden duty of the court to give effect to the law. To excuse acts that are contrary to law or public policy simply on the basis of their pervasiveness would be a dereliction of
E that duty. The court is a court of law, not a court of widespread practices.

[57] As explained, a breach of the conditions of licence may also amount to a breach of O. 3(1) of the Customs (Prohibition of Imports) Order 2017. In the circumstances of this case, we are not satisfied that such contravention would trigger the operation of s. 24(b) of the Contracts Act 1950.

F **[58]** The respondents may not necessarily be without relief; they may claim against Rintis for the return of the purchase price paid, provided that they satisfy the requirements of s. 66 of the Contracts Act 1950 and/or the trio considerations referred to by Lord Toulson in the UK Supreme Court case of *Patel v. Mirza*[16] as applied by the Feberal Court in *Detik Ria v. Prudential*
G *Corporation*[17].

[59] For the reasons explained above, we allow both appeals in this case with costs of RM20,000 here and below for each appeal, such costs to be subject to an allocatur. The orders of the High Court dated 5 January 2024 are set aside, and the orders of the deputy registrar restored.

H **Endnote:**

1. See para. 15.1 of the affidavit in reply affirmed by Ryohei Okochiat p. 280 of encl. 7 in Appeal No B-04(IM)-3-01/2024.
2. Paragraph 12 at E7/288 in Appeal No. B-04(IM)-3-01/2024.
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3. E10/765 in Appeal No. B-04(IM)-3-01/2024.
4. E7/267 in Appeal No. B-04(IM)-3-01/2024.

5. Enclosure 7, p. 373 of the record of appeal in Appeal No. B-03(IM)-3-01/2024.
6. Paragraph 7.3 at E7/276 in Appeal No. B-04(IM)-3-01/2024.
7. See E7/294 in Appeal No. B-04(IM)-3-01/2024.
8. *Tay Bok Choon v. Tahansan Sdn Bhd* [1987] 1 CLJ 441; [1987] CLJ (Rep) 24; [1987] 1 MLJ 433; [1987] 1 MLRA 68 (Privy Council).
9. *Eng Mee Yong & Ors v. V Letchumanan* [1979] CLJU 18; [1979] 1 LNS 18; [1979] 2 MLJ 212; [1979] 1 MLRA 143.
10. *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609; [1995] 1 AMR 622; [1995] 1 MLJ 281; [1995] 1 MLRA 48.
11. *Sigma Air Conditioning Sdn Bhd v. World Wide Agencies (M) Sdn Bhd* [1979] CLJU 94; [1979] 1 LNS 94; [1980] 1 MLJ 179.
12. Civil Appeal No: 02(f)-40-07/2023(W).
13. *Tan Keen Keong v. Tan Eng Hong Paper & Stationery Sdn Bhd & Ors And Other Appeals* [2021] 2 CLJ 318; [2020] MLJU 204.
14. *Thong Foo Ching & Ors v. Shigenori Ono* [1998] 4 CLJ 674; [1998] 4 MLJ 585.
15. PU(A) 103/2017.
16. [2016] UKSC 42.
17. *Op cit*, footnote 12.